

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:14 CV 265**

<b>FARM WORKS, LLC,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	<b><u>ORDER</u></b>
<b>v</b>	)	
	)	
<b>NORTH CAROLINA CHARTER</b>	)	
<b>COMMUNICATIONS, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**THIS MATTER** is before the undersigned pursuant to a Joint Certification and Report of F.R.C.P. 26(f) Conference and Discovery Plan (#3). While preparing the Pretrial Order and Case Management Plan for this case, the undersigned examined the file. In the Complaint that was filed in the District Court Division of Haywood County, North Carolina, the Plaintiff named as Defendant “North Carolina Charter Communications, Inc.” (#1-1, p. 2) In paragraph 3, the Plaintiff alleges “Plaintiff is informed and believes and therefore alleges that Defendant is a corporation organized and existing under and by virtue of the laws of the State of North Carolina.” The Complaint was not answered by North Carolina Charter Communications, Inc., but was answered by Charter Communications, Inc. In the Answer, Charter Communications, Inc. alleges it has

been improperly identified as North Carolina Charter Communications, Inc. (#1-1, p. 10) In a Notice of Removal (#1) which removed the action to this Court, Charter Communications, Inc. again alleges it has been improperly identified as North Carolina Charter Communications, Inc. and further alleges Charter Communications, Inc. is a corporation incorporated in the State of Delaware with its principal place of business in the State of Missouri. Plaintiff has never responded to the allegations made by Charter Communications, Inc. that Plaintiff has improperly identified the Defendant, nor has the Plaintiff filed an amended Complaint that would reflect the name of the proper Defendant, if it is not North Carolina Charter Communications, Inc. An examination of the records of the Office of the Secretary State of the State of North Carolina does not show there is a corporation organized and existing under and by virtue of the laws of the State of North Carolina having the name of "North Carolina Charter Communications, Inc.".

Upon the Court's own motion, the Court will order that the Plaintiff will have up to and including January 19, 2015 to file an Amended Complaint reflecting the name of the proper Defendant, whoever it may be. Should the Plaintiff chose to not file an Amended Complaint on or before that date, counsel for the Plaintiff and counsel for the Defendant will be required to appear before

this Court on January 23, 2015 at 2:00 p.m. at which time the parties may present arguments as to why this Court should not issue a Memorandum and Recommendation directing that this matter be dismissed for failure of the Plaintiff to name the proper party Defendant.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that:

- 1) The Plaintiff shall have up and including **January 19, 2015** to file an Amended Complaint naming the correct and appropriate Defendant in this matter as a party in this case;
- 2) Should the Plaintiff not file an Amended Complaint on or before **January 19, 2015**, counsel for the Plaintiff and counsel for the Defendant shall appear before this Court in Courtroom #2 of the United States Courthouse in Asheville, North Carolina on **January 23, 2015 at 2:00 p.m.** so they may be heard as to why this Court should not enter a Memorandum and Recommendation recommending the dismissal of this action.

Signed: January 5, 2015

Dennis L. Howell  
Dennis L. Howell  
United States Magistrate Judge

